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Ensuring Legal Certainty for Customary Law Communities in Indonesia: Analyzing the Ratification Process of the Customary Law Communities Bill

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Abstract

This study examines the pursuit of legal certainty for customary law communities in Indonesia through analyzing the ratification process of the Customary Law Communities Bill. Customary law communities, integral to Indonesia's cultural fabric, have long grappled with ambiguous legal recognition, leading to vulnerability and uncertainty. By scrutinizing the journey of the Customary Law Communities Bill towards enactment, this research aims to elucidate the prospects of establishing a robust legal framework safeguarding the rights and interests of these communities. Drawing from legislative documents, legal debates, and stakeholder

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insights, the study assesses the bill's opportunities and challenges. Additionally, the research delves into the implications of legal certainty for customary law communities, exploring its potential impact on autonomy, cultural heritage, and socio-economic development. Through case studies and empirical evidence, the study illuminates the practical ramifications of the bill's provisions across Indonesia. This study contributes to discussions on legal pluralism, indigenous rights, and community empowerment in Indonesia. By advocating for the recognition and protection of customary law communities within the legal framework, it seeks to foster inclusive governance and cultural diversity. Ultimately, it underscores the significance of ensuring legal certainty as a cornerstone of justice and equality for all communities, irrespective of their cultural or legal traditions.

KEYWORDS *Customary Community, Adat Community, Legal Protection, Law and Society*

Introduction

In Indonesia, a diverse archipelago with rich cultural heritage, customary law communities have long played a vital role in governing local affairs and preserving traditional practices. However, despite their significance, these communities often face legal ambiguity and lack formal recognition within the national legal framework. This situation has led to various challenges, including land disputes, inadequate access to justice, and marginalization of indigenous peoples.[1]

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[1] Timo Duile, "Indigenous peoples, the state, and the economy in Indonesia: National debates and local processes of recognition." *ASEAS-Austrian Journal of South-East Asian Studies* 13, no. 1 (2020): 155-160; I. Nyoman Prabu Buana Rumiartha, Ni Luh Gede Astariyani, and Anak Agung Sagung Ngurah Indradewi. "Human Rights of Indigenous People in Indonesia: A Constitutional Approach." *Journal of East Asia and International Law* 15, no. 2 (2022): 395-402; Felix Dalimartha, and Rieneke Sara. "Human rights for indigenous peoples." *ICLSSEE 2021: Proceedings of the 1st International Conference on Law,*

To address these issues, the Indonesian government embarked on a legislative journey to provide legal certainty and protection for customary law communities through the enactment of the Customary Law Communities Bill. The ratification process of this bill has been a subject of considerable debate and scrutiny, reflecting the complexities inherent in balancing traditional practices with modern legal standards.[2]

Additionally, customary law communities in Indonesia play a crucial role in maintaining social cohesion and resolving legal disputes within their respective regions.[3] However, the lack of legal certainty surrounding their customary practices has led to challenges and discrepancies in the application and recognition of their rights. To address this issue, the Customary Law Communities Bill was proposed with the aim of providing legal recognition and protection to customary law communities in Indonesia. This study aims to analyze the ratification process of the Customary Law Communities Bill and assess its effectiveness in ensuring legal certainty for customary law communities.[4] In order to provide a comprehensive understanding of the ratification process, this paper will analyze the various factors and stakeholders

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Social Science, Economics, and Education, ICLSSEE 2021, March 6th 2021, Jakarta, Indonesia. European Alliance for Innovation, 2021.

[2] Rizky Julranda, Michael Geremia Siagian, and Michael Ariel Perdana Zalukhu. "Penerapan Hukum Progresif Sebagai Paradigma Pembangunan Hukum Nasional dalam Rancangan Undang-Undang Masyarakat Hukum Adat." *Crepido* 4, no. 2 (2022): 171-183; Muhammad Dahlan, "Rekognisi hak masyarakat hukum adat dalam Konstitusi." *Undang: Jurnal Hukum* 1, no. 2 (2018): 187-217; Ade Bagus Saswoyo, and Margo Hadi Pura. "Urgensi Pengundangan Rancangan Undang-Undang Masyarakat Hukum Adat sebagai Bentuk Kesetaraan Warga Negara." *Jurnal Suara Hukum* 5, no. 1 (2023): 19-43.

[3] Julianto Jover Jotam Kalalo, et al. "Political Dichotomy of Indonesian Legislation Regulations with Local Law Customary Politics in the Border Area." *1st International Conference on Social Sciences (ICSS 2018)*. Atlantis Press, 2018.

[4] F. Syahputra, et al. "Community surveillance: how to incorporate customary community in monitoring marine area (study case Panglima Laot in Aceh)." *IOP Conference Series: Earth and Environmental Science*. Vol. 216. No. 1. IOP Publishing, 2018.

involved in shaping the bill, including the government, customary law communities, civil society organizations, and legislative institutions.[5]

Customary law communities are also recognized as an integral components of Indonesia's socio-cultural landscape, serving as essential custodians of indigenous traditions and governance structures. Despite their profound historical importance, these communities have consistently faced challenges in securing formal recognition and legal safeguards within the national legal system. The lack of explicit legal provisions has rendered customary law communities susceptible to marginalization and exploitation, impeding their capacity to defend their rights and preserve their cultural heritage.[6]

Ongoing efforts to address the legal standing of customary law communities are evident, particularly through legislative initiatives like the Customary Law Communities Bill. This legislation signifies a significant step forward in establishing legal clarity and bolstering the rights of customary law communities within Indonesia's legal structure. By providing a robust framework for their acknowledgment, safeguarding, and empowerment, the bill stands poised to address persistent grievances and cultivate inclusive governance.[7]

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[5] Kalalo, et.al., "Political Dichotomy of Indonesian Legislation Regulations with Local Law Customary Politics in the Border Area."

[6] Desak Putu Dewi Kasih, et al. "The Exploitation of Indigenous Communities by Commercial Actors." *Journal of Ethnic and Cultural Studies* 8, no. 4 (2021): 91-108; Herman Hidayat, et al. "Forests, law and customary rights in Indonesia: Implications of a decision of the Indonesian Constitutional Court in 2012." *Asia Pacific Viewpoint* 59, no. 3 (2018): 293-308; Dik Roth, and Sandrayati Moniaga. "Interview with Sandrayati Moniaga: Legal pluralism and the struggle for recognition of customary rights in Indonesia." *The Journal of Legal Pluralism and Unofficial Law* 53, no. 3 (2021): 485-497.

[7] Gde Made Swardhana, and Suviwat Jenvitchuwong. "The participation within indigenous land management: developments and challenges of indigenous communities protection." *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 308-327; Sisca Ferawati Burhanuddin, "Indigenous Law on Land: How Does the Government Build Constitutional Protection Against Indigenous People." *Jurnal Mantik* 3, no. 4 (2020): 799-804; William Hendrik Reba, "The Existance of Indigenous Legal Community Rights and the Position In Indonesia Legal System." *Papua Law Journal* 2, no. 2 (2019): 156-178.

This paper aims to delve into the nuances of the ratification process of the Customary Law Communities Bill in Indonesia. By analyzing the legislative journey, stakeholder perspectives, and potential implications, this study seeks to shed light on the mechanisms and challenges involved in ensuring legal recognition and protection for customary law communities. By examining the legislative process, public discourse, and policy debates surrounding the bill, this paper seeks to identify the challenges and opportunities for ensuring legal certainty for customary law communities in Indonesia. In today's rapidly changing world, the significance of accurate weather forecasts cannot be overstated. Ensuring legal certainty for customary law communities in Indonesia is crucial for maintaining social cohesion and resolving disputes within these communities.

The first section of this paper will provide an overview of customary law communities in Indonesia, exploring their cultural significance, legal status, and the challenges they encounter within the current legal framework. Subsequently, the focus will shift to the legislative process, examining the origins of the Customary Law Communities Bill, key provisions, and debates surrounding its ratification.

Furthermore, this paper will scrutinize the various stakeholders involved in the ratification process, including government agencies, indigenous representatives, civil society organizations, and legal experts. By analyzing their perspectives, interests, and interactions, a comprehensive understanding of the complexities surrounding customary law recognition in Indonesia will be attained. Moreover, this study will assess the potential impacts of the Customary Law Communities Bill on indigenous rights, land tenure, resource management, and broader legal frameworks. By evaluating both the intended benefits and unintended consequences, this analysis aims to provide insights into the broader implications of legal reforms for customary law communities.

This paper seeks to contribute to the ongoing discourse on customary law recognition and indigenous rights in Indonesia. By critically examining the ratification process of the Customary Law Communities Bill, it aims to inform policymakers, legal practitioners, scholars, and indigenous communities about the challenges and

opportunities in ensuring legal certainty for customary law communities.[8] Ultimately, the goal is to foster inclusive and equitable legal frameworks

[8] The lack of legal certainty for customary law communities in Indonesia is deeply rooted in the country's historical context. Indonesia's rich cultural diversity has long been reflected in the multitude of indigenous traditions and governance systems practiced by various ethnic groups across the archipelago. However, colonial rule, first by the Dutch and later by the Japanese, significantly impacted these indigenous practices. Colonial powers imposed their own legal systems, often marginalizing or disregarding customary laws in favor of European legal frameworks. This historical legacy has left customary law communities in a precarious position within the modern legal landscape of Indonesia. Within Indonesia's formal legal framework, there is a notable absence of explicit recognition and protection for customary laws and the rights of indigenous communities. The legal system, primarily based on civil law principles inherited from the Dutch colonial era, does not adequately address the complexities of customary governance structures and traditional land tenure systems. As a result, customary law communities often find themselves navigating a legal landscape fraught with ambiguity and uncertainty. This lack of clear legal standing leaves indigenous communities vulnerable to various challenges, including land disputes, resource exploitation, and cultural marginalization. Socio-political dynamics further compound the challenges faced by customary law communities in Indonesia. The country's transition to democracy and subsequent decentralization reforms have brought new opportunities for local autonomy but have also exacerbated existing tensions surrounding indigenous rights and land tenure. While decentralization theoretically grants local governments greater authority over land management and resource allocation, it has also led to inconsistencies in the recognition and enforcement of customary laws across different regions. Moreover, rapid economic development and natural resource extraction have intensified land conflicts, posing significant threats to indigenous territories and livelihoods. Addressing the lack of legal certainty for customary law communities requires a multifaceted approach that acknowledges the historical, legal, and socio-political complexities at play. Efforts to recognize and protect the rights of indigenous communities must be grounded in a commitment to cultural diversity, social justice, and sustainable development. This entails reforming the legal framework to explicitly recognize customary laws, ensuring meaningful participation of indigenous communities in decision-making processes, and promoting inclusive governance structures that respect and uphold indigenous rights within the broader legal framework of Indonesia. Only through such concerted efforts can Indonesia begin to address the longstanding challenges faced by its customary law communities and pave the way for a more just and equitable society. *See* Edy Nurcahyo, et al. "Legality and Legal Certainty of Ulayat Land for

that respect and protect the cultural heritage and rights of indigenous peoples in Indonesia.

This study represents a pioneering endeavor in the realm of legal scholarship concerning indigenous rights and governance in Indonesia. While existing literature has provided invaluable insights into the challenges faced by customary law communities and the broader legal landscape of Indonesia, a focused examination of the ratification process of the Customary Law Communities Bill remains notably absent.

Prior research, such as Simon Butt and Timothy Lindsey's, have extensively discussed the historical significance and contemporary challenges surrounding customary law in Indonesia. However, this seminal work does not delve into the specific legislative efforts aimed at formalizing the legal recognition and protection of customary law communities.[9] Similarly—The Role of Indigenous Peoples and Customary Law in the Development of National Law the Paradigm of Pancasila —by Halim and Noorman offer a comprehensive examination of indigenous peoples' struggles in Indonesia, yet it does not specifically analyze the legislative journey of the Customary Law Communities Bill.[10]

By undertaking a detailed analysis of the ratification process of the Customary Law Communities Bill, this paper offers a novel contribution to the field. It explores the intricate mechanisms, stakeholder dynamics, and debates surrounding the bill's passage, shedding light on the complexities of balancing traditional practices with modern legal

Indigenous Law Communities (Analysis of Decision Number 1430 K/Pdt/2022)." *Jurnal Hukum Volkgeist* 7, no. 1 (2022): 61-67; Sandra F. Joireman, "Aiming for certainty: the Kanun, blood feuds and the ascertainment of customary law." *The Journal of Legal Pluralism and Unofficial Law* 46, no. 2 (2014): 235-248; I. Wayan Suambara, and I. Nyoman Putu Budiartha. "Grant Money with a Legal Certainty by Regional Government to Traditional Villages in Bali." *Sociological Jurisprudence Journal* 6, no. 2 (2023): 97-104; Anne Gunadi, "The Embodiment of Adat Law as an Element of Legal Certainty in Administration of Adat Rights." *Indonesia Law Review* 9, no. 3 (2019): 259-277.

[9] Simon Butt and Tim Lindest, "Traditional and Customary Law: Adat", in *Indonesian Law* (Oxford: Oxford University Press, 2018).

[10] Lathifah Hanim, and M. S. Noorman. "The Role of Indigenous Peoples and Customary Law in the Development of National Law the Paradigm of Pancasila." *The 4th International and Call for Paper* 1, no. 1 (2018): 400-413.

standards. Moreover, the paper aims to identify potential implications and outcomes of the bill's implementation, thereby advancing understanding and informing future research agendas in the realm of indigenous rights and legal reform in Indonesia.

In the further, the ratification process of the Customary Law Communities Bill in Indonesia is a crucial step towards ensuring legal certainty for these communities. Jayus emphasizes the need for recognition and protection of these communities[11], a sentiment echoed by Winarsih who discusses the importance of customary dispute settlement in the context of legal reform.[12] Rudy, et.al further explore the role of the Indonesian Constitutional Court in recognizing customary rights, highlighting the potential for co-existence between customary law and constitutionalism.[13] Additionally, Herlambang, et.al provide a specific case study of the Rejang Customary Law, underscoring the importance of understanding and preserving these unique legal systems.[14] These studies collectively underscore the significance of the Customary Law Communities Bill in providing legal certainty and protection for these communities.

In essence, this paper represents a groundbreaking effort to fill a critical gap in the literature by providing a nuanced analysis of recent legislative developments aimed at ensuring legal certainty for customary law communities in Indonesia. By synthesizing insights from existing research and offering fresh perspectives on the ratification process of the Customary Law Communities Bill, this study contributes to the ongoing

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[11] Jaja Ahmad Jayus, "Urgency of legal indigenous communities' position in indonesian constitutional system." *Jurnal Media Hukum* 27, no. 1 (2020): 79-98.

[12] Winarsih Winarsih. "Recognition of Customary Disputes Settlement in Law Number 6 of 2014 on Villages: A Responsive Law Review in Indonesian Legal Reform." *Journal of Indonesian Legal Studies* 2, no. 2 (2017): 101-112.

[13] Rudy Rudy, R. P. Ryzal Perdana, and Wijaya Rudi. "The Recognition of Customary Rights by Indonesian Constitutional Court." *Academic Journal of Interdisciplinary Studies* 10, no. 3 (2021): 308-318.

[14] Herlambang Herlambang, Helda Rahmasari, and Randy Pradityo. "A Renewal Attempt at a Bill in Indonesia's Criminal Law: A Study of the Development in the Norm of Rejang Customary Law". *International Journal of Multidisciplinary Research and Analysis* 5, no. 7 (2022): 1661-1665

discourse on indigenous rights, governance, and legal reform in Indonesia and beyond.

Indonesian Diversity: Navigating Past and Present Challenges for the *Masyarakat Hukum Adat* Protection

The diversity of different tribes, religions, languages, cultures, and customs in each region owned by Indonesia is a characteristic for Indonesia as a multicultural country. This has existed since thousands of years ago even before Indonesia became independent. This diversity has been preserved by indigenous peoples for generations so that it still exists today. Indigenous people are a group of people who come from ancestors who have passed down in a certain area that has its own value, economic, political, cultural, social, and territorial systems.[15] This understanding was obtained based on the results of the National Congress of Indigenous Peoples in 2004. Customary law is a form of Indonesian soul that grows and develops in accordance with the culture of the people, customary law is applicable. Therefore, to maintain the existence of diversity owned by indigenous peoples of Indonesia, customary law was formed.

Adat Recht is a translation from Dutch meaning customary law which is the work of Cristian Snouck Hugronje in the book *De Atjehers* (1893).[16] Then it was reused by Cornelis Van Vollenhoven who researched the existence of law in the Dutch East Indies which eventually resulted in a work entitled *Het Adat Recht van Nederland Indie.*[17] Van Vollenhoven

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[15] National Commission on Human Rights, "Realizing the Constitutional Rights of Indigenous Peoples", Document Set Commemorating the International Day of Indigenous Peoples, p. 43-51.

[16] Eka Susylawati, "Eksistensi Hukum Adat dalam Sistem Hukum di Indonesia." *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 4, no. 1 (2009): 124-140; Ikhda Fitria, "Recognizing adat law: Problems and challenges in modern law system in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 503-516.

[17] Van Vollenhoven was a Dutchman stationed in the Dutch East Indies, who had an interest in Indonesian law. Books have been written on customary law, one of which is Het Adat-Recht van Nederlandsch. *See* Cornelis Van Vollenhoven, J. F.

argued that a customary law society is "*a legal society that designates the notion of human unity that is housed in a fixed area with an orderly structure with the ruler or administrator and owns property, both land and heirlooms and intangible property such as peerage*."[18] However, Van Vollenhoven argues that *adat* has sanctions that can be categorized as customary law. The sanction contained in customary law is a punishment used as an effort to improve the balance of the environment that is disturbed due to violations committed by someone in the community.

Indonesia has recognized the existence of customary law with Article 18B paragraph (2) of the 1945 Constitution which states that "*The State recognizes and respects the existence of the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia*." The existence of Article 18B paragraph (2) indicates that this regulation is the basis for the existence of customary law that has been constitutionally recognized by Indonesia. On the other hand, the existence of customary law is evidenced by Article 5 paragraph (1) of Law No. 48 of 2009 which reads "Judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society". In addition, Article 10 paragraph (1) of Law No. 10 of 2009 concerning Judicial Power states that "*The court is prohibited from refusing to examine, adjudicate, and decide a case submitted under the pretext that the law does not exist or is unclear, but is obliged to examine and try it*." From this rule, it is indirect that judges need to follow the development of customary law itself and also recognize the existence of customary law in certain courts in court.

Constitutionally, the existence of indigenous peoples has been recognized by the state. However, in practice, the provision of rights owned by indigenous peoples is often ignored. Moreover, regarding problems in the management of Indonesia's natural resources which are

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Holleman, and H. W. J. Sonius. *Van Vollenhoven on Indonesian Adat Law*. (New York: Springer, 2013).

[18] Mochamad Adib Zain, and Ahmad Siddiq. "Pengakuan Atas Kedudukan dan Keberadaan Masyarakat Hukum Adat (MHA) Pasca dibentuknya Undang-Undang Nomor 6 Tahun 2014 Tentang Desa." *Jurnal Penelitian Hukum* 2, no. 2 (2015): 63-76.

actually used well for the benefit and prosperity of the people who manage them.[19] However, recognition in this case is considered not strong enough to be able to provide recognition of the existence of customary law without specific legal certainty governing indigenous peoples in Indonesia. This has caused many conflicts involving indigenous peoples. Indonesia's vast and diverse territory has led to many conflicts over land disputes over unclear ownership and over natural resources. This makes the government need to make definite rules regarding land ownership itself so that there are no more land disputes and misunderstandings in natural resource management. [20]

The government wants to increase the country's foreign exchange by managing Indonesia's natural resources so that they can be exported to other countries. However, this is sometimes constrained by the lack of role of indigenous peoples in decision-making related to land management. This causes the existence of indigenous peoples to often be questioned.[21]

One example of conflict regarding land disputes occurred in the Manggarai Regency area between the government and indigenous peoples located in the area. The conflict began with *tu'a teno*, which is the call of people in the Manggarai language who are tasked with measuring

[19] Iwona Ryniak-Olszanka, "The Rights of Indigenous Peoples in Indonesia in the Context of 'Responsibility to Protect'." *Studia Iuridica* 96 (2023): 301-317; Daniel Edwin Indrajaya Gore, and Ellyne Dwi Poespasari. "Legal Protection for Indigenous People's Rights in Indonesian Law." *PalArch's Journal of Archaeology of Egypt/Egyptology* 17, no. 4 (2020): 2516-2526; Naufal Khaidar, and Maulana Adi Nugraha. "Protection of Indigenous Peoples (Local Beliefs) in the Context of Human Rights in Indonesia." *Contemporary Issues on Interfaith Law and Society* 1, no. 2 (2022): 101-130.

[20] Mirza Satria Buana, "Development as a threat to indigenous peoples' rights in Indonesia." *International Journal on Minority and Group Rights* 27, no. 3 (2020): 442-471; Glen Wright, "Indigenous People and Customary Land Ownership Under Domestic Redd Frameworks: A Case Study of Indonesia." *Law, Environment and Development Journal* 7, no. 2 (2012): 117-131; Dhea Meila Fitriani, "Normative Review of Indigenous Community Rights In Mining Areas." *Estudiante Law Journal* 3, no. 2 (2021): 295-309.

[21] Ahsana Nadiyya, Ayu Putri Rainah Petung Banjaransari, and Heni Rosida. "Menakar Undang-Undang Mineral dan Batubara terhadap Kerentanan Perlindungan Hak Masyarakat Hukum Adat." *Jurnal Hukum Lex Generalis* 2, no. 3 (2021): 195-212.

customary land boundaries in dividing the boundaries of customary land. At that time, the division of territorial boundaries was considered unfair, causing dissatisfaction with the division of land.[22] Similarly, the conflict that occurred in Jayapura occurred due to the expansion of Sentani Airport which was expanded on local customary land. This causes the people who occupy the area to not accept their territory being used by the government so that indigenous people want compensation from the government for the land. In fact, this incident has occurred since 2011 but at that time it has not found a settlement due to the use of areas that do not have legal settlement and the absence of land titles for ownership as a form of administrative recognition of the land.[23]

In 2011, plans were set in motion to expand the runway at Sentani Airport, a move aimed at transforming it into an international hub. However, this ambitious project required additional land, which encroached upon customary land owned by the local community, originally designated for sago cultivation. As a result, negotiations ensued between the government and the indigenous peoples occupying the affected area, with compensation being a central point of contention. While an agreement was reached, the disbursement of compensation was delayed until September 2014, hampered by bureaucratic processes tied to government funds.

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[22] Yohanes Wendelinus Dasor, "Revitalisasi Peran Lembaga Adat dalam Penanganan Konflik Sosial: Studi di Manggarai Nusa Tenggara Timur." *Sosio Konsepsia: Jurnal Penelitian dan Pengembangan Kesejahteraan Sosial* 9, no. 3 (2020): 213-228; Oktavianus A. Gampung, "Konflik Tanah di Kabupaten Manggarai nusa Tenggara Timur." *Jurnal Politik Muda* 3, no. 1 (2014): 49-57; Yohanes Wendelinus Dasor, "Revitalisasi Peran Lembaga Adat dalam Penanganan Konflik Sosial: Studi di Manggarai Nusa Tenggara Timur." *Sosio Konsepsia: Jurnal Penelitian dan Pengembangan Kesejahteraan Sosial* 9, no. 3 (2020): 213-228.

[23] *See* Jhitzac Andrew Rafel Mandowen, “Konflik Pertanahan Antara Masyarakat Adat, Kepala Adat, dan Negara dalam Perluasan Tanah Bandar Udara Sentani di Kabupaten Jayapura”. *Thesis* (Surabaya: Universitas Airlangga, 2017); James Yoseph Palenewen, and Marthinus Solossa. "Settlement of Land Disputes Through Traditional Law in the Sentani Traditional Community of Jayapura Regency." *International Journal of Multicultural and Multireligious Understanding* 9, no. 11 (2023): 458-463.

Despite the agreed-upon timeline, the Sentani Airport Authority (UPBU Sentani) failed to fulfill its end of the bargain, breaching the terms outlined in the agreement. This breach led to dissatisfaction among the indigenous peoples, prompting protests and the blockage of access to the runway expansion site. In an attempt to resolve the conflict, the government intervened, appointing the National Land Agency (BPN) and the Jayapura district government as arbitrators to verify the affected customary land.

By March 10-11, 2012, BPN had completed the verification process, providing a definitive list of landowners affected by the runway project. This list served as the basis for compensating indigenous peoples whose land had been utilized. Subsequently, on May 30-31, 2016, UPBU implemented the compensation scheme, totaling 156 billion Rupiah for 12.5 hectares of land, disbursed at Mako Brimob Polda Papua. However, the disbursement of compensation sparked fresh conflicts, this time involving the Customary Head, BPN, UPBU, and the recipient community. The Customary Head, dissatisfied with his share of the compensation, sought to challenge the decision through legal means. Consequently, on May 30, 2016, he filed a lawsuit against BPN, UPBU, and the affected community at the Jayapura State Administrative Court. Despite the ensuing legal proceedings, the lawsuit was ultimately dismissed on May 15, 2017, ruling in favor of the defendants.[24]

In Law of the Republic of Indonesia Number 2 of 2012 concerning land acquisition for development for public interest, it is the basis for the implementation of compensation for the Sentani Airport runway project that the payment of compensation for land acquisition for public interest is directly to the land owner without having to go through an intermediary.[25] However, the traditional chairman argued that his party

[24] Rachmi Syarfina, "Pengaruh Hukum Adat dalam Proses Peralihan Hak Tanah Ulayat Pada Pembangunan Perluasan Bandara di Jayapura." *Jurnal Hukum Kenotariatan Otentik's* 1, no. 1 (2019): 47-53.

[25] Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for Public Interest. Furthermore, it is emphasized that The Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, often referred to as the "*Land Acquisition Law*," is a legislative framework enacted by the Indonesian government to streamline the

was entitled to 40% of the compensation worth 156 billion Rupiah. However, this was opposed by the indigenous landowners because they considered that the traditional leader did not own land in the area where the runway expansion of Sentani Airport was expanded. Indigenous peoples assume that land ownership is private property.

The form of resistance carried out by indigenous peoples is a form of indigenous people's desire for a resolution to the conflict over ownership of this land. This is due to the emergence of aggrieved parties so that

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process of acquiring land for public infrastructure projects deemed to be of national importance. The primary objective of this law is to facilitate the acquisition of land needed for development projects that serve the public interest, such as the construction of roads, airports, ports, and other vital infrastructure. Key provisions of the Land Acquisition Law include mechanisms for determining compensation for landowners whose properties are acquired for public projects. The law establishes principles of fairness and transparency in the valuation of land and the calculation of compensation, aiming to ensure that affected landowners receive just and adequate compensation for their properties. Additionally, the Land Acquisition Law outlines procedures for the acquisition of land, including requirements for conducting social and environmental impact assessments, engaging with affected communities, and resolving disputes through mediation or legal channels. The law also stipulates the roles and responsibilities of relevant government agencies, such as the National Land Agency (BPN), in overseeing the land acquisition process and ensuring compliance with legal requirements. Overall, the Land Acquisition Law provides a legal framework to balance the needs of public development projects with the rights and interests of landowners and affected communities. It aims to streamline the land acquisition process, promote transparency and accountability, and mitigate conflicts that may arise in the course of acquiring land for public infrastructure projects. *See also* Rofi Wahanisa, et al. "Problems of disputes/conflicts over land acquisition towards development for public interest in Indonesia." *International Journal of Criminology and Sociology* 10 (2021): 320-325; Yesi Nurmantiyas Sari, Rizal Nugroho, and Al Khanif. "Land Acquisition for Public Interests: A Review from the Human Rights Context." *Indonesian Journal of Law and Society* 1, no. 1 (2020): 21-32; Isye Melo, and Feibe Engeline Pijoh. "The Impact of Legal Land Acquisition for Public Interest." *3rd International Conference on Social Sciences (ICSS 2020)*. Atlantis Press, 2020; I. Gusti Ayu Kade Harry, I. Gusti Ayu Ketut Rachmi Handayani Adhisukmawati, and Lego Karjoko. "Validity of Assessment Policy on Land Acquisition for Development in the Public Interest." *International Journal of Educational Research and Social Sciences (IJERSC)* 4, no. 2 (2023): 270-275.

indigenous peoples make a strategy to take their rights to their land, in this case by conducting demonstrations. The conflict caused by the absence of proof of land ownership certificates is due to the lack of knowledge of indigenous peoples in carrying out the process of owning land certificates so that the land handover process is only carried out based on local customary law but is no longer formalized through legal channels.

This proves that the recognition of customary law systems only applies in an indigenous community. This is proven by events like the above that the recognition of customary law does not necessarily apply in the eyes of legal law. Based on the rules mentioned earlier, there has been no additional explanation regarding the limits and consequences of the existence of customary law communities themselves.

Not only that, conflicts that occur between indigenous peoples and the state also occur in customary forests in Indonesia. The Alliance of Indigenous Peoples of the Archipelago (AMAN) submitted a legal review in March 2012 regarding the provisions contained in Law Number 41 of 1999 in Article 1 and 6, Article 6 paragraph 6, article 4 paragraph (3), article 5 paragraph 1, 2, 3, 4, and article 67 paragraph 1, 2, 3 concerning Forestry. This application was later accepted by the Constitutional Court on May 16, 2013.[26]

In this case, the applicant wants a form of control over the Forestry Law that places customary forests as part of state forests. In addition, the conditional confession made by the government is considered to have inflicted the applicant's constitutional harm. The constitutional disadvantage in question is that efforts in the promotion, assistance, and struggle for the rights of indigenous peoples. In fact, the form of the desire of indigenous peoples in accessing natural resources has been clearly regulated in TAP MPR No. IX of 2001 which states that there is a form

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[26] *See* Fitria Esfandiari, "Persepsi Mahkamah Konstitusi Tentang Hutan Adat Pasca Putusan No. 35/PUU-X/2012." *Legality: Jurnal Ilmiah Hukum* 26, no. 2 (2018): 267-280; Bambang Wiyono, "Kedudukan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/PUU-IX/2012 dan Hubungannya dengan Pengelolaan Hutan di Indonesia." *Aktualita (Jurnal Hukum)* 1, no. 1 (2018): 60-76; H. B. Gusliana, and Mardalena Hanifah. "Pola Perlindungan Hutan Adat Terhadap Masyarakat Adat di Provinsi Riau Pasca Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012." *Jurnal Hukum Respublica* 16, no. 1 (2016): 183-200.

of recognition, appreciation, and protection in natural resource management from the state against the rights of indigenous peoples in natural resource management. However, this form of recognition is still limited and reductive because it is only given rights in management so that ownership rights still belong to the state.

The utilization of natural resources is inherently aimed at benefiting communities by fulfilling their essential life needs. However, the reality is marred by numerous allegations of natural resource theft. This is primarily due to the absence of formal recognition, rendering community actions often perceived as illegal. Such a situation directly contradicts the principles outlined in TAP MPR No. IX of 2011 Article 4 letter j, which underscores the imperative of acknowledging, respecting, and safeguarding the rights of indigenous peoples and the nation's cultural diversity concerning agrarian or natural resources.

In alignment with this mandate, Article 5 of TAP MPR No. IX of 2001 underscores the necessity for a comprehensive review of laws and regulations pertaining to agrarian issues. This review aims to harmonize policies across sectors, thereby realizing laws and regulations grounded in the principles outlined in Article 4 of the aforementioned provision. This directive emphasizes the importance of synchronizing policies to ensure that legal frameworks governing natural resource management uphold the rights of indigenous peoples and promote cultural diversity.[27]

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[27] *See* Republic of Indonesia. *TAP MPR No. IX/MPR/2001 tentang Pembaruan Agraria dan Pengelolaan Sumber Daya Alam.* TAP MPR No. IX/MPR/2001 is a regulation issued by the People's Consultative Assembly (MPR) of Indonesia, specifically addressing Agrarian Reform and Natural Resource Management. This regulation outlines key principles and directions aimed at reforming land and natural resource management practices in the country. The regulation emphasizes the importance of agrarian reform as a means to achieve social justice, economic development, and equitable distribution of land resources among the Indonesian people. It underscores the need to address historical inequalities in land ownership and access, particularly among rural communities and indigenous peoples. Furthermore, TAP MPR No. IX/MPR/2001 highlights the significance of sustainable and equitable management of natural resources. It calls for policies and measures that prioritize environmental conservation, community empowerment, and the protection of indigenous rights over natural resource exploitation. Overall, this regulation serves as a guiding framework for the Indonesian government to formulate policies and

The form of recognition carried out by the government is conditional recognition. This is as stated in the fragment of Article 18B paragraph (2) which reads "*as long as it is alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia.*" The existence of indigenous peoples requires a recognition which in this case is determined by the state. Although society exists sociologically, its existence also needs to be officially recognized in laws that contain the specifics of indigenous peoples' boundaries.

Currently, *de jure* that there are laws and regulations that respect, protect, promote, and fulfill the rights of origin of the community already exist. However, if it is seen *de facto* that there has been a continuous violation of the unitary rights of indigenous peoples, causing vertical conflicts between indigenous peoples and the government. In addition, after the second amendment of the 1945 Constitution in Article 28I paragraph (3) it is also stated that "*cultural identity and rights of traditional communities are respected in accordance with the development of times and civilizations.*" This means that customary law communities clearly exist and must be protected by the Unitary State of the Republic of Indonesia.

To anticipate the backwardness of the existence of indigenous peoples, the government needs to issue a law that regulates in detail about indigenous peoples. Currently, the government is working on drafting a law on indigenous peoples. However, this law has not been passed until now even though it is necessary to recognize the existence of indigenous peoples in Indonesia.

This draft has been proposed since the reign of Indonesia's 6th president, President Susilo Bambang Yudhoyono. At that time this bill

enact legislation aimed at promoting agrarian reform and sustainable natural resource management. It reflects the country's commitment to addressing social and economic disparities while ensuring the responsible utilization of its natural resources for the benefit of present and future generations. *See* Ida Nurlinda, "Penerapan prinsip-prinsip pembaruan agraria menurut Ketetapan MPR No. IX/MPR/2001 tentang Pembaruan Agraria dan Pengelolaan Sumber Daya Alam dalam Kebijakan Pertanahan Nasional." *Thesis.* (Yogyakarta: Universitas Gadjah Mada, 2008); Nurhasan Ismail, et al. "Penjabaran Asas-Asas Pembaharuan Agraria Berdasarkan Tap MPR No. IX/MPR/2001 dalam Perundang-undangan di Bidang Pertanahan." *Mimbar Hukum* 22, no. 2 (2010): 360-372; Retno Sulistyaningsih, "Reforma Agraria di Indonesia." *Perspektif* 26, no. 1 (2021): 57-64.

had reached the stage of a special committee (*Pansus*). However, until the end of SBY's reign it was not completed. Turning to the next government, namely during the period of Joko Widodo's leadership, the House of Representatives (DPR) has completed the *draft* of the Customary Law Community Bill. Then President Joko Widodo has also issued a Presidential Letter and has ordered a number of ministries to make a Problem Inventory List (DIM) Bill. It's just that the previous incident repeated itself where there was no clarity until where the process took place. Therefore, until now the Bill has not been officially passed. [28]

Once the draft law on customary law communities is enacted, it will provide a definitive legal framework within Indonesian legislation, serving as a crucial milestone for these communities. This legislation is anticipated to establish clear boundaries for customary law communities, offering them legal certainty regarding their position and existence within the national legal system. With this legal umbrella in place, customary law communities can operate with confidence, knowing their rights and responsibilities as outlined in Article 3 of the Indigenous Peoples Bill, thereby enabling them to flourish and advance while upholding their dignity and cultural heritage.[29]

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[28] *See* Fatimah Fatimah, and Febryansyah Nataly. "Strategi Komunikasi Aliansi Masyarakat Adat Nusantara (AMAN) dalam Memperjuangkan RUU Masyarakat Hukum Adat." *Jurnal Ilmiah Komunikasi (JIKOM) STIKOM IMA* 14, no. 3 (2022): 116-124; Bambang Dwi Waluyo, "Permasalahan Tanah Adat: Kesalahan dalam Komunikasi Pemerintahan atau Kegegalan Pesan Regulasi dan Kebijakan di Indonesia." *AL ADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora* 1, no. 1 (2023): 240-249; Jawahir Thontowi, "Perlindungan dan pengakuan masyarakat adat dan tantangannya dalam hukum Indonesia." *Jurnal Hukum Ius Quia Iustum* 20, no. 1 (2013): 21-36.

[29] Chairul Fahmi, et al. "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 1019-1064; Sartika Intaning Pradhani, "Traditional rights of indigenous people in Indonesia: legal recognition and court interpretation." *Jambe Law Journal* 1, no. 2 (2018): 177-205; Greg Acciaioli, "From customary law to indigenous sovereignty: reconceptualizing masyarakat adat in contemporary Indonesia." In *The Revival of Tradition in Indonesian Politics*. (London: Routledge, 2007), pp. 315-338.

However, it is essential for this bill to strike a delicate balance by providing clear guidelines and conditions for its implementation. Ensuring clarity in the levels and requirements outlined within the legislation is paramount to facilitating its effective execution within indigenous communities. By establishing transparent parameters, the real-world application of the bill can proceed smoothly and accurately, empowering indigenous peoples to govern themselves in accordance with their traditions and values.

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